

REMARKS/ARGUMENTS

Status of Claims

Claims 1 to 29 are currently pending in the application.

35 U.S.C. § 103(a) Rejections

In rejecting claims under 35 U.S.C. § 103(a), the Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). It is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d, 1071, 1073 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966), viz., (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. The Graham factors, including secondary considerations when present, are the controlling inquiries in any obviousness analysis. Once the findings of fact are articulated, Office personnel must provide an explanation to support an obviousness rejection under 35 U.S.C. 103. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). According to *KSR*, for the Patent Office to properly combine references in support of an obviousness rejection, the Patent Office must identify a reason why a person of ordinary skill in the art would have sought to combine the respective teachings of the applied references. Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *See Oetiker*, 977 F.2d at 1445. *See also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445; *Piasecki*, 745 F.2d at 1472.

Applicant's analysis below demonstrates that the Examiner has failed to properly conform to the aforementioned guidelines for a finding of obviousness under 35 U.S.C. 103, that is the factual determinations set forth in *Graham v. John Deere Co.* and the reason why a person of ordinary skill in the art would have sought to combine the respective teachings of the applied references as required by *KSR*.

Claims 1 to 8, 11 to 18 and 21 to 29

The Examiner has stated that claims 1 to 8, 11 to 18 and 21 to 29 are unpatentable under 35 U.S.C. 103(a) over Alriksson *et al.* (U.S. Patent No. 6,977,938, hereinafter Alriksson) in view of Dolganow *et al.* (U.S. Patent Publication No. 2006/0123110, hereinafter Dolganow) and McAllister *et al.* (U.S. Patent Publication No. 2001/0010681, hereinafter McAllister).

Claim 1

Missing Elements

The following is a discussion of why the cited references do not disclose all the elements of the rejected claims. While it may be considered that “the mere existence of differences between prior art and an invention does not establish the invention’s non-obviousness”, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one skilled in the art (Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of the Supreme Court Decision in *KSR international Co. v. Teleflex Inc.*, published in Federal Register Vol. 72, No. 195 October 10, 2007). As such, if elements from a claim are not disclosed by the combination of cited references and no valid reasoning is provided why the missing elements would be obvious, this may provide a strong basis for why a claim should not be rejected based on obviousness.

With regard to claim 1, the Examiner alleges that Alriksson discloses “a method of routing packets from a wireless communications terminal” in column 3, lines 3-6, in which it is indicated by the Examiner that in “source routing” the route is chosen by the terminal.

The Examiner concedes that Alriksson does not disclose “receiving, via a respective wireless link from at least one of a plurality of wireless access nodes forming a network, network information relating to links between nodes”. The Examiner alleges that Dolganow discloses this limitation in the form of a source routing protocol using available resource advertisements for identifying a path as disclosed in the abstract of Dolganow and paragraph [0033] of Dolganow, in which an example of resource information is disclosed as being available bandwidth.

Applicant submits that Dolganow does not deal with wireless communications. In paragraphs [0035] to [0037] Dolganow describes Figure 1 and states that “Source routing protocols allow each node within the network to determine a path to a particular destination based on that node’s knowledge of the network topology”. Dolganow states that “the various switches, or nodes within the network store a routing table or other databases that includes parameters concerning the various links (i.e. topology) of the network that may be used in routing calls” (emphasis added). Paragraph [0037] in particular then describes an example in which originating switch A 30 of Figure 1 and destination switch D 33 of Figure 1 are the source and destination nodes. There is no indication that these nodes are “wireless communication terminals” of the type recited in claim 1. While the Examiner may be relying on Alriksson for disclosure of “wireless communication terminals”, Applicant submits that neither the Originating Parties 10 or Destination Parties 20 in Figure 1 of Dolganow, or the switches are wireless terminals. While the Originating Parties 10 and Destination Parties 20 may be considered communication terminals, they are not wireless devices and they do not receive, via a respective wireless link from at least one of a plurality of wireless access nodes forming a network, network information relating to links between nodes. Hence, Dolganow does not disclose “receiving, via a respective wireless link from at least one of a plurality of wireless access nodes forming a network, network information relating to links between nodes” (emphasis added) as recited in claim 1.

The Examiner concedes that Alriksson does not disclose “selecting a route via the network for packets from the terminal in dependence upon the network information and supplying packets with information relating to the selected route”. The Examiner alleges that Dolganow discloses this limitation in the form of the source routing protocol using available resource advertisements for identifying a path as described in the abstract.

As discussed above, Dolganow does not deal with wireless communications. Applicant submits that Dolganow does not suggest or describe a wireless communication terminal “selecting a route via the network for packets from the terminal”, as Dolganow describes nodes that perform route selection communicating with end users, not wireless terminals that perform route selection. While the Originating Parties 10 and Destination Parties 20 may be considered communication terminals, they are not wireless devices and they do not select a route via the

network for packets from the wireless terminal in dependence upon the network information and supplying packets with information relating to the selected route.

Furthermore, as Dolganow does not suggest a wireless communication terminal “selecting a route via the network for packets from the terminal”, Dolganow does not suggest or disclose the wireless terminal “supplying packets with information relating to the selected route” as recited in claim 1 of the present application.

Also with regard to claim 1, the Examiner concedes that the combination of Alriksson and Dolganow does not disclose “selecting a route in dependence upon information dependent upon wireless communications between the terminal and a least one of the nodes”. However, it is alleged that McAllister discloses this limitation.

The Examiner specifically points to the Background of the Invention section in McAllister that refers to a publication by E.M. Spiegel, which discloses “an alternate path routing scheme based on a combination of progressive control and source routing” (emphasis added). Source routing is utilized to effect the path computation. A determined routing path together with a cost threshold and a crank back limit are included in a setup message of a packet and this is forwarded along the determined routing path. Progressive control is utilized once the method encounters a blocked link. It is then the responsibility of an intermediate node at which the packet and setup message are stopped to determine another route in the network to allow the packet to reach the desired endpoint.

The Examiner alleges that the limitation “in dependence upon the ... information dependent upon wireless communications between the terminal and at least one of the nodes” is disclosed by McAllister in that E.M. Spiegel discloses that the source routing utilized for path routing “is a function of link cost” (paragraph [0007], emphasis added).

In claim 1, the limitation “information dependent upon wireless communications between the terminal and at least one of the nodes” defines information that is not forwarded from other nodes regarding the link, but known information available in the terminal relating to its wireless links with at least one other node in the network. Routing decisions are in part based on information available in the terminal relating to its wireless links with at least one other node in

the network. There is no clear suggestion or specific disclosure in McAllister that a “link cost” requirement is equivalent to “information dependent upon wireless communications between the terminal and at least one of the nodes” (emphasis added).

In a similar fashion that Dolganow does not disclose a method for use in a wireless terminal, McAllister likewise does not disclose a method for use in a wireless terminal in the preferred embodiments of the patent application. Specifically, with reference to Figure 1, McAllister describes a digital network including three switching nodes, for example ATM switches, and users coupled to these switching nodes. McAllister describes that each node, i.e. the switching nodes and not the end users, “contains a local routing table 11 which is manually preconfigured when the network is setup to store the routes to adjacent nodes for reaching possible endpoints from that node.” It is the switching nodes, and not the end users that are performing the selection of a route. Furthermore, there is no indication that the publication by E.M. Spiegel is for use with wireless communication terminals.

For at least the reasons discussed above, Applicant respectfully submits that the combination of Alriksson, Dolganow and McAllister, does not teach all the limitations recited in claim 1, as alleged by the Examiner. Furthermore, the Examiner has failed to explain why the missing features would be obvious to one skilled in the art. Without all the limitations of claim 1 being disclosed by the three references and no reason provided by the Examiner why these missing limitations would be obvious, it is not reasonable to expect that the combination of references would render claim 1 of the present invention obvious.

Reason to Combine

Once the scope of the prior art is ascertained, the content of the prior art must be properly combined. An obviousness inquiry requires review of a number of factors, including the background knowledge possessed by a person having ordinary skill in the art, to determine whether there was an apparent reason to combine the elements of the prior art in the fashion claimed by the present invention. For the Patent Office to combine references in support of an obviousness rejection, the Patent Office must identify a reason why a person of ordinary skill in the art would have combined the references *KSR Int’l v. Teleflex, Inc.*, No. 04-1350, slip op. at 14 (U.S., Apr. 30, 2007), Id. at 15. Even if the Patent Office is able to articulate and support a

suggestion to combine the references, it is impermissible to pick and choose elements from the prior art while using the application as a template.

Applicant submits that there is no suggestion of a desirability of the claimed invention in the references that would serve as a reason for one skilled in the art to combine the references. Applicant submits that the Examiner has failed to provide a suitable explanation of why one would combine the three cited references when the two references being relied upon for the majority of the steps of the method claim (Dolganow and McAllister) are unrelated to wireless communications. While Alriksson may disclose wireless communications, there is no clear suggestion in the references why performing selection of a route in a wireless terminal distinct from network nodes, as opposed to within switching network nodes as disclosed in both of Dolganow and McAllister, would be beneficial or advantageous.

In addition, the Examiner's motivation for combining Alriksson, Dolganow and McAllister is tied to the Examiner's view that these references teach all the limitations of claim 1. As detailed above, this is an incorrect interpretation of the combination of references, and as such this renders defective the Examiner's reasoning for combining the references.

The Examiner alleges that it would have been obvious to modify the system of Alriksson by "receiving, via a respective wireless link from at least one of a plurality of wireless access nodes forming a network, network information relating to links between nodes and selecting a route via the network for packets from the terminal in dependence upon the network information and supplying packets with information relating to the selected route" as allegedly disclosed by Dolganow. The Examiner alleges that such a modification would benefit the system by ensuring the terminal chooses a route based on the current available bandwidth between the links. Applicant submits that Dolganow discloses networks in which the switching nodes, not wireless terminals, receive information and select an appropriate route. Applicant submits that there is no provided reason why having a communication terminal (the end user in Dolganow), and more specifically a wireless communication terminal, selecting the route, which is what is recited in claim 1, would be beneficial and advantageous over network nodes selecting the route, which is what is disclosed in Dolganow. Therefore, Applicant submits that the Examiner has not provided a suitable reason for combining Alriksson and Dolganow.

The Examiner alleges that it would have been obvious to modify the system of the combination of Alriksson and Dolganow by selecting a route in dependence upon information dependent upon communications between the terminal and at least one of the nodes as allegedly disclosed in McAllister. The Examiner alleges that such a modification would benefit the system by ensuring that the chosen route is affordable to the user. Applicant submits that Dolganow and McAllister both disclose networks in which the switching nodes, not wireless terminals, select an appropriate route. Applicant submits that there is no provided reason why having a communication terminal (the end user in Dolganow and McAllister), and more specifically a wireless communication terminal, selecting the route, which is what is recited in claim 1, would be beneficial and advantageous over network nodes selecting the route, which is what is disclosed in Dolganow. Therefore, Applicant submits that the Examiner has not provided a suitable reason for combining Alriksson and Dolganow. Furthermore, Applicant submits that it is unclear how “selecting a route in dependence upon information dependent upon communications between the terminal and at least one of the nodes” would result in the chosen route being affordable to the user as alleged by the Examiner, or for that matter what being “affordable to the user” means in the context of the claim. Therefore, Applicant submits that the Examiner has not provided a suitable reason for combining Alriksson, Dolganow and McAllister.

Applicant submits that the Examiner’s selection of Alriksson is based on hindsight selection solely for its disclosure of a wireless terminal. The Examiner concedes that Alriksson does not disclose the steps of the method performed by the wireless device in claim 1 of the present application. As Alriksson does not disclose the active method step limitations of claim 1, it is improbable that one skilled in the art would consider such a reference in combination with references that do not disclose wireless terminal functionality as alleged by the Examiner.

For at least the reasons discussed above, Applicant submits that the Examiner has failed to provide a suitable reason for combining the cited references.

Applicant submits that the Examiner has failed to meet the initial burden of establishing a *prima facie* case of obviousness in view of limitations of claim 1 not being disclosed by the

combination of references and failure to provide a suitable reason for combining the references. It is respectfully requested that the Examiner reconsider and withdraw the obviousness rejection to claim 1.

Claim 2

Missing Elements

Claim 2 is dependent upon claim 1 and includes the additional limitation “in the terminal, monitoring a status of the selected route”. The Examiner alleges that Dolganow discloses this limitation in the abstract in the form of “source routing protocol uses the available resource advertisement for identifying a path”. There is no suggestion or disclosure in the abstract of Dolganow that the terminal monitors the status of a selected route. Firstly, as discussed above, Dolganow is not directed to the originating parties (communication terminals) performing any selection of routes or monitoring of those routes. Secondly, in the abstract of Dolganow there is no specific disclosure of any form of “monitoring the status of the selected route” (emphasis added). The abstract merely describes that “The method advertises the available resource information for the node to adjacent nodes linked to the node in the network when the node receives a request for a connection to be routed over the link, the request seeking resources exceeding available resources for the link, but not exceeding the last advertised resources for the link” (emphasis added). There is no disclosure of what occurs after the request is granted.

Reason to Combine

For at least the reasons discussed above with regard to the rejection to claim 1, Applicant submits that there is insufficient reason to combine the references as alleged by the Examiner.

Applicant submits that claim 2 patentably distinguishes over the cited references of Alriksson, Dolganow and McAllister. It is respectfully requested that the Examiner reconsider and withdraw the obviousness rejection to claim 2.

Claims 3 and 15

Missing Elements

Claim 3 is dependent upon claim 1 and includes the additional limitation “in the terminal, receiving and monitoring network information to determine a status of the selected route and, selectively in dependence upon the determined status, selecting a new route via the network for packets from the terminal”. The Examiner alleges that Dolganow discloses this limitation in the abstract, pointing to the same subject matter as in the rejection of claim 2. For reasons discussed above in the rejection of claim 2, Applicant submits that Dolganow does not disclose the additional limitation of claim 3.

Reason to Combine

For at least the reasons discussed above with regard to the rejection of claim 1, Applicant submits that there is insufficient reason to combine the references as alleged by the Examiner.

Claim 15 recites similar subject matter to claim 3 and patentably distinguishes over the combination of references for at least the same reasons discussed above.

Applicant submits that claims 3 and 15 patentably distinguish over the cited references of Alriksson, Dolganow and McAllister. It is respectfully requested that the Examiner reconsider and withdraw the obviousness rejection to claims 3 and 15.

Claims 14, 24, 27 and 28

Claims 14 and 24 are additional independent method claims that recite respective methods that are performed in the terminal. Claim 27 is an independent claim directed to a method of “routing packets from a wireless communication terminal via nodes of a network” wherein the steps are controlled by the wireless communication terminal. Claim 28 is an independent claim directed to a method of communication in a wireless access node of a network wherein the node receives packets including routing information selected by the wireless communication terminal. As claims 14, 24, 27 and 28 all pertain to a wireless terminal operating in a similar fashion to claim 1, Applicant submits that claims 14, 24, 27 and 28 patentably

distinguish over Alriksson, Dolganow and McAllister. It is respectfully requested that the Examiner reconsider and withdraw the obviousness rejection of claims 14, 24, 27 and 28.

Claims 4 to 8, 11 to 13, 16 to 18, 21 to 23, 25, 26 and 29

Claims 4 to 8, 11 to 13, 21 and 22 are dependent, either directly or indirectly, on claim 1. Claims 16 to 18 and 23 are dependent, either directly or indirectly, on claim 14. Claims 25 and 26 are dependent, either directly or indirectly, on claim 24. Claim 29 is dependent on claim 28. For at least the reason of their dependence on claims 1, 14, 24 and 28, Applicant submits that dependent claims 4 to 8, 11 to 13, 16 to 18, 21 to 23, 25, 26 and 29 patentably distinguish over the combination of Alriksson, Dolganow and McAllister.

It is respectfully requested that the Examiner reconsider and withdraw the obviousness rejection of the identified dependent claims.

Claims 9, 10, 19 and 20

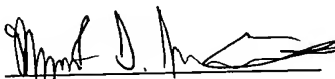
Claims 9, 10, 19 and 20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Alriksson, Dolganow and McAllister and in view of other references. Claims 9 and 10 depend indirectly on claim 1 and claims 19 and 20 depend directly on claim 14. In view of Applicant's submission regarding the 35 U.S.C. 103 rejection of claims 1 and 14, dependent claims 9, 10, 19 and 20 should also be patentable.

In view of the above discussion, the Examiner is respectfully requested to withdraw the 35 U.S.C. 103 rejections of claims 9, 10, 19 and 20.

In view of the foregoing, early favorable consideration of this application is earnestly solicited.

Respectfully submitted,

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Dated: December 8, 2008

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